



February 3, 1999

## HOUSE BILL No. 1646

DIGEST OF HB1646 (Updated January 28, 1999 3:17 pm - DI 76)

**Citations Affected:** IC 34-24; IC 35-33.

**Synopsis:** Disposition of seized property. Requires property seized under the law concerning forfeiture of property used in violation of certain criminal statutes to be transferred, upon motion of a prosecuting attorney, to the appropriate federal authority for disposition under federal laws concerning customs duties and drug abuse prevention and control.

**Effective:** July 1, 1999.

**Cochran**

January 21, 1999, read first time and referred to Committee on Courts and Criminal Code.  
February 2, 1999, reported — Do Pass.

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February 3, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE BILL No. 1646

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A BILL FOR AN ACT to amend the Indiana Code concerning civil and criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 34-24-1-9 IS ADDED TO THE INDIANA CODE  
2       A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3       1999]: **Sec. 9. Upon motion of a prosecuting attorney under**  
4       **IC 35-33-5-5(i), property seized under this chapter must be**  
5       **transferred to the appropriate federal authority for disposition**  
6       **under 19 U.S.C. 1616a or 21 U.S.C. 881(e).**

7       SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS  
8       FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) All items of  
9       property seized by any law enforcement agency as a result of an arrest,  
10      search warrant, or warrantless search, shall be securely held by the law  
11      enforcement agency under the order of the court trying the cause,  
12      except as provided in this section.

13      (b) Evidence that consists of property obtained unlawfully from its  
14      owner may be returned by the law enforcement agency to the owner  
15      before trial, in accordance with IC 35-43-4-4(h).

16      (c) Following the final disposition of the cause at trial level or any  
17      other final disposition **the following shall be done:**

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(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(f) The law enforcement agency disposing of property in any manner provided in subsections (b) and (c) of this section shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(g) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(h) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

**(i) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred to the appropriate federal authority for disposition under 19 U.S.C. 1616a or 21 U.S.C. 881(e).**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1646, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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